

PATENT
Customer No. 22,852
Attorney Docket No. 7883.0004-02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
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Peter J. WILK) Group Art Unit: 3762
)
Application No.: 09/534,038) Examiner: P. Bianco
)
Filed: March 24, 2000)
)
For: LEFT VENTRICULAR CONDUITS) Confirmation No. 2278
TO CORONARY ARTERIES AND)
METHODS FOR CORONARY)
BYPASS)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

TERMINAL DISCLAIMER

Petitioner ("Assignee") Percardia, Inc., duly organized under the laws of the State of Delaware and having its principal place of business at 10 Al Paul Lane, Suite 202, Merrimack, New Hampshire 03054, through its attorneys, represents that it is the only assignee of the entire right, title, and interest in and to the above-identified application, U.S. Patent Application No. 09/534,038, filed March 24, 2000, for LEFT VENTRICULAR CONDUITS TO CORONARY ARTERIES AND METHODS FOR CORONARY BYPASS, as indicated by assignment duly recorded in the United States Patent and Trademark Office at Reel 011050, Frame 0444, and is the only assignee of U.S. Patent No. 6,638,237 B1, issued October 28, 2003, for LEFT VENTRICULAR CONDUITS AND METHODS FOR DELIVERY, as indicated by the assignment duly recorded in the

United States Patent and Trademark Office in provisional application no. 60/147,211 at Reel 010561, Frame 0681, to which U.S. Patent No. 6,638,237 claims priority.

To obviate a double patenting rejection, Assignee hereby disclaims, under the provisions of 37 C.F.R. § 1.321, the terminal part of any patent granted on the above-identified U.S. Patent Application No. 09/534,038, which would extend beyond the expiration date of U.S. Patent No. 6,638,237 B1, and hereby agrees that any patent so granted on the above-identified U.S. Patent Application No. 09/534,038 shall be enforceable only for and during such period that the legal title to said patent shall be the same as the legal title to U.S. Patent No. 6,638,237 B1. This agreement runs with any patent granted on the above-identified U.S. Patent Application No. 09/534,038 and is binding upon the grantee, its successors, or assigns.

In making the above disclaimer, Assignee does not disclaim the terminal part of any patent granted on the above-identified U.S. Patent Application No. 09/534,038 that would extend beyond the expiration date of the full statutory term, as defined in 35 U.S.C. §§ 154 to 156 and 173, of U.S. Patent No. 6,638,237 B1, as shortened by any terminal disclaimer, in the event that U.S. Patent No. 6,638,237 B1 expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or in part, is terminally disclaimed under 37 C.F.R. § 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term, as presently shortened by any terminal disclaimer.

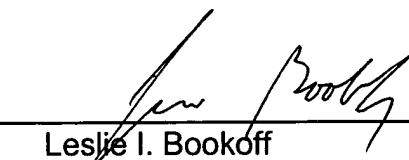
In accordance with the fee schedule set forth in 37 C.F.R. § 1.20(d), the required fee of \$55.00 is being filed with this Terminal Disclaimer.

If a check for the required fee is not filed concurrently herewith or if there are any additional fees due in connection with the filing of this reply, please charge the fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: November 1, 2004

By: 
Leslie I. Bookoff
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